1. D.B. CIVIL SPECIAL APPEAL (WRITS) NO.871/2006
Kishan Singh Vs. The State of Rajasthan & Ors.

2. D.B. CIVIL SPECIAL APPEAL (WRITS) NO.872/2006
Madan Lal Vs. The State of Rajasthan & Ors.

Date : 24.01.2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE CHATRA RAM JAT

Mr. P.P. Choudhary for the appellant.
Mr. Kuldeep Mathur for the respondents.

Heard learned counsel for the parties.

These two appeals have arisen in the like circumstances. The respective petitioner-respondents Shri Vinod Gaur and Shri Inder Singh had preferred S.B. Civil Writ Petition No.5961/2006 and 5960/2006 respectively on the identical grounds. Both had challenged the transfer of the present appellants as Patwari displacing the petitioners from their place of posting vide order dated 11.10.2006 and the petitioner was transferred to some other patwar circle. The orders were made in pursuance of certain directions received from the Ministry of Revenue. The petitioners

themselves were transferred at the present place of posting vide order dated 15.7.2006 passed by the Collector under the like directions from the officers of Revenue Department in Secretariat from their original place of posting.

The primary contentions of the petitioners in the writ petitions were that under Rule 9(ii) of the Land Revenue (Land Records) Rules, 1957 there is a prohibition against the transfer of patwaries unless the Collector has satisfied himself that such transfers are necessary in the interest of efficiency of work or to fill up vacancy created by long leave, resignation, dismissal, suspension or transfer of a Patwari and in case the transfer is effected, the patwari going on transfer shall have to complete all his record and clear all his work in arrear before handing over charge to his successor in office.

The power of transfer of a Patwari vests exclusively in the Collector of District under Sub-Rule (1) of Rule 9.

It was contended before the learned Single Judge that the Collector alone could have transferred such Patwaries on his satisfaction that such transfer is necessary in the efficiency of work or in other contingencies or if the employee has failed to discharge his duty statutorily fixed on him. The transfers were not founded on any such satisfaction by the Collector but were made on the direction of Minister or higher authority in the department. Thus, the Collector has acted in abdication of his authority in favour of someone who had not been authorized to act in this behalf by statute. The transfer being in violation of the statute cannot be sustained.

Learned Single Judge has come to the conclusion that both the transfers were in violation of sub-Rule (2) of Rule 9 yet it has set aside the transfers of the appellants but has not affected the transfers of the petitioner-respondents on the ground that the same are not under challenge.

We are of the opinion that the basic foundation of the learned Single Judge that the transfer of the petitioners was not under challenge is not correct. The present appellants contended that the illegality of the transfer of the petitioners themselves and if the challenge of petitioners succeed, they also cannot be allowed to continue at places under first transfer orders. It is well settled that ordinarily, the Court does not exercise power of judicial review in the matter of transfer, which ordinarily does not affect the civil servants prejudicially in legal sense. One well known exception to this rule is where the transfer is contrary to statute. In the present case, the transfer of patwaries are shown to be governed by statutory provision. The rules framed in exercise of powers conferred under Land Revenue Act are piece of subordinate legislation and are part of statute itself.

Under the Rules, power to transfer patwaries have been conferred specifically on Collector of District, where transfers are to be made from one Patwar Circle to another within the District. The circumstances and

manner in which a patwari is to be transferred have also been prescribed by the rules. The importance of continuity of patwari at the place in the interest of maintenance of land records is too obviously reflected in provision that even when he is transferred to other circle, the transfer orders does not become effective until the concerned patwari has completed the record in hand.

Where a statute provides the authority who has to act on conditions under which he has to act, such action can be taken only by such authority and on fulfilment of conditions under which he has been authorised to act, is a principle so well ingrained in system that it needs hardly any elaboration.

We are, therefore, of the opinion that it is not a case of merely allowing the restoration of illegality but allowing the illegal action taken by the Collector at the behest of Ministry of Revenue which had no business to act in derogation of law. If the rule of law prevails in respect of citizen, it also governs the action of the

Government authorities and the persons in power. No one is above law howsoever high he may be. The law does not permits any other authority than prescribed under the Rules to usurp that power and subject the statutory authority to act under their dictates.

In view thereof, these appeals succeed. The orders issued in favour of the respondent-petitioners also cannot be allowed to stand by restoring them and the transfer order made in favour of the petitioners and the appellant both stand vitiated. Both must return to their respective original place of posting.

The competent authority may be free to pass an appropriate order to set the things right.

[CHATRA RAM JAT], J. [RAJESH BALIA], J.

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